

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 193

Citations Affected: IC 5-2; IC 9-13-2-86; IC 11-12-3.7-3; IC 16-31-3-; IC 20-28-5-8; IC 22-15-5-16; IC 25-1-1.1; IC 31-30-1-4; IC 34-24-1-1; IC 35-33-5-5; IC 35-38-2.6-1; IC 35-42-1-1; IC 35-45-6-1; IC 35-46-6; IC 35-47-4-5; IC 35-48-4; IC 35-50-2-2.

Synopsis: Controlled substances. Permits the destruction of chemically contaminated equipment used in the illegal manufacture of a controlled substance if certain conditions are met. Provides that a law enforcement officer has the right to inspect a retailer's log of ephedrine or pseudoephedrine sales. Prohibits a person from selling or releasing a log or the records from the completion of a log for commercial purposes. Allows the Indiana criminal justice institute to obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. Prohibits the possession of two or more precursors with the intent to manufacture a controlled substance, and makes the possession of anhydrous ammonia with the intent to manufacture amphetamine a Class D felony that may be enhanced under certain circumstances. Requires a law enforcement agency that discovers a child less than 18 years of age at a drug laboratory to notify the department of child services. Defines "methamphetamine abuse" and requires law enforcement agencies to report methamphetamine abuse to the criminal justice institute. Removes methamphetamine from the crimes of: (1) dealing in cocaine, a narcotic drug, or methamphetamine; and (2) possession of cocaine, a narcotic drug, or methamphetamine; and establishes new crimes of dealing in methamphetamine and possession of methamphetamine. Specifies that, for purposes of the law concerning motor vehicles, a person is intoxicated if the person is under the influence of: (1) model glue or certain other substances; or (2) nitrous oxide. Defines inhaling a toxic vapor, a Class B misdemeanor, as the act of ingesting or inhaling, with intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses, the fumes of amyl butrate, isobutyl nitrate, freon, chlorinated hydrocarbons, methylene chloride, hexane, ether, chloroform, halothane, or any other chemical having the property of releasing toxic vapors. Makes conforming amendments. **(This conference committee report does the following: (1) Corrects a conflict with SEA 145-2006. (2) Prohibits a person from selling or releasing a retailer's log of ephedrine or pseudoephedrine sales or the records from the completion of a log for a commercial purpose and allows the Indiana criminal justice institute to obtain information concerning a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only**

for statistical purposes. (3) Amends the definition of "model glue" for purposes of the law concerning glue sniffing. (4) Adds certain substances to the list of substances that may be used to commit the crime of inhaling toxic vapors.)

Effective: Upon passage; July 1, 2006.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 193 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-2-6-18 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2006]: Sec. 18. (a) As used in this section, "institute" means the
- 5 Indiana criminal justice institute established by section 3 of this
- 6 chapter.
- 7 (b) The institute shall adopt:
- 8 (1) guidelines; and
- 9 (2) a reporting form or a specified electronic format, or both;
- 10 for the report of methamphetamine abuse by a law enforcement
- 11 agency under IC 5-2-16.
- 12 (c) The guidelines adopted under this section must require a law
- 13 enforcement agency to report the existence of methamphetamine
- 14 abuse to the institute on the form or in the specified electronic
- 15 format adopted by the institute.
- 16 (d) The guidelines adopted under this section:
- 17 (1) may incorporate a recommendation of the
- 18 methamphetamine abuse task force (IC 5-2-14) that the
- 19 institute determines to be relevant;
- 20 (2) may require the institute to report the information
- 21 concerning methamphetamine abuse to one (1) or more
- 22 additional agencies or organizations;

(3) must require the institute to maintain reports filed under IC 5-2-16 in a manner that permits an accurate assessment of methamphetamine abuse in Indiana; and

(4) must require a law enforcement agency to report any other information that the institute determines to be relevant.

SECTION 2. IC 5-2-15-4, AS ADDED BY P.L.192-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. A law enforcement agency that discovers a child less than ~~fourteen (14)~~ **eighteen (18)** years of age at a ~~methamphetamine laboratory site used for the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9)~~ shall notify the ~~division of family and children~~ **department of child services**.

SECTION 3. IC 5-2-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 16. Methamphetamine Abuse Reporting

Sec. 1. As used in this chapter, "law enforcement agency" has the meaning set forth in IC 10-11-8-2.

Sec. 2. As used in this chapter, "methamphetamine abuse" means the:

- (1) use;**
- (2) sale;**
- (3) manufacture;**
- (4) transport; or**
- (5) delivery;**

of methamphetamine or of a methamphetamine precursor, if the precursor is being used, sold, manufactured, transported, or delivered to facilitate the manufacture of methamphetamine.

Sec. 3. A law enforcement agency that discovers evidence of methamphetamine abuse shall report the methamphetamine abuse to the criminal justice institute on a form and in the manner prescribed by guidelines adopted by the criminal justice institute under IC 5-2-6-18.

SECTION 4. IC 9-13-2-86 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 86. "Intoxicated" means under the influence of:

- (1) alcohol;**
- (2) a controlled substance (as defined in IC 35-48-1);**
- (3) a drug other than alcohol or a controlled substance; or**
- (4) a substance described in IC 35-46-6-2 or IC 35-46-6-3; or**
- (5) a combination of ~~alcohol, controlled substances, or drugs~~ **substances described in subdivisions (1) through (4);****

so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties.

SECTION 5. IC 11-12-3.7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "drug dealing offense" means one (1) or more of the following offenses:

- (1) Dealing in cocaine ~~or~~ a narcotic drug ~~or~~ ~~methamphetamine~~ (IC 35-48-4-1), unless the person received only minimal consideration as a result of the drug transaction.**

(2) **Dealing in methamphetamine (IC 35-48-4-1.1), unless the person received only minimal consideration as a result of the drug transaction.**

(3) Dealing in a schedule I, II, III, IV, or V controlled substance (IC 35-48-4-2 through IC 35-48-4-4), unless the person received only minimal consideration as a result of the drug transaction.

~~(3)~~ (4) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10), unless the person received only minimal consideration as a result of the drug transaction.

SECTION 6. IC 16-31-3-14, AS AMENDED BY P.L.22-2005, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) A person holding a certificate issued under this article must comply with the applicable standards and rules established under this article. A certificate holder is subject to disciplinary sanctions under subsection (b) if the ~~state emergency management agency~~ **department of homeland security** determines that the certificate holder:

(1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a certificate, including cheating on a certification examination;

(2) engaged in fraud or material deception in the course of professional services or activities;

(3) advertised services or goods in a false or misleading manner;

(4) falsified or knowingly allowed another person to falsify attendance records or certificates of completion of continuing education courses required under this article or rules adopted under this article;

(5) is convicted of a crime, if the act that resulted in the conviction has a direct bearing on determining if the certificate holder should be entrusted to provide emergency medical services;

(6) is convicted of violating IC 9-19-14.5;

(7) fails to comply and maintain compliance with or violates any applicable provision, standard, or other requirement of this article or rules adopted under this article;

(8) continues to practice if the certificate holder becomes unfit to practice due to:

(A) professional incompetence that includes the undertaking of professional activities that the certificate holder is not qualified by training or experience to undertake;

(B) failure to keep abreast of current professional theory or practice;

(C) physical or mental disability; or

(D) addiction to, abuse of, or dependency on alcohol or other drugs that endanger the public by impairing the certificate holder's ability to practice safely;

(9) engages in a course of lewd or immoral conduct in connection with the delivery of services to the public;

(10) allows the certificate holder's name or a certificate issued under this article to be used in connection with a person who renders services beyond the scope of that person's training, experience, or competence;

(11) is subjected to disciplinary action in another state or jurisdiction on grounds similar to those contained in this chapter. For purposes of this subdivision, a certified copy of a record of disciplinary action constitutes prima facie evidence of a disciplinary action in another jurisdiction;

(12) assists another person in committing an act that would constitute a ground for disciplinary sanction under this chapter; or

(13) allows a certificate issued by the commission to be:

(A) used by another person; or

(B) displayed to the public when the certificate is expired, inactive, invalid, revoked, or suspended.

(b) The ~~state emergency management agency~~ **department of homeland security** may issue an order under IC 4-21.5-3-6 to impose one (1) or more of the following sanctions if the ~~state emergency management agency~~ **department of homeland security** determines that a certificate holder is subject to disciplinary sanctions under subsection (a):

(1) Revocation of a certificate holder's certificate for a period not to exceed seven (7) years.

(2) Suspension of a certificate holder's certificate for a period not to exceed seven (7) years.

(3) Censure of a certificate holder.

(4) Issuance of a letter of reprimand.

(5) Assessment of a civil penalty against the certificate holder in accordance with the following:

(A) The civil penalty may not exceed five hundred dollars (\$500) per day per violation.

(B) If the certificate holder fails to pay the civil penalty within the time specified by the ~~state emergency management agency;~~ **department of homeland security**, the ~~state emergency management agency~~ **department of homeland security** may suspend the certificate holder's certificate without additional proceedings.

(6) Placement of a certificate holder on probation status and requirement of the certificate holder to:

(A) report regularly to the ~~state emergency management agency~~ **department of homeland security** upon the matters that are the basis of probation;

(B) limit practice to those areas prescribed by the ~~state emergency management agency;~~ **department of homeland security**;

(C) continue or renew professional education approved by the ~~state emergency management agency~~ **department of homeland security** until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or

(D) perform or refrain from performing any acts, including community restitution or service without compensation, that the ~~state emergency management agency~~ **department of homeland security** considers appropriate to the public interest or to the rehabilitation or treatment of the certificate holder.

The ~~state emergency management agency~~ **department of**

homeland security may withdraw or modify this probation if the **state emergency management agency department of homeland security** finds after a hearing that the deficiency that required disciplinary action is remedied or that changed circumstances warrant a modification of the order.

(c) If an applicant or a certificate holder has engaged in or knowingly cooperated in fraud or material deception to obtain a certificate, including cheating on the certification examination, the **state emergency management agency department of homeland security** may rescind the certificate if it has been granted, void the examination or other fraudulent or deceptive material, and prohibit the applicant from reapplying for the certificate for a length of time established by the **state emergency management agency department of homeland security**.

(d) The **state emergency management agency department of homeland security** may deny certification to an applicant who would be subject to disciplinary sanctions under subsection (b) if that person were a certificate holder, has had disciplinary action taken against the applicant or the applicant's certificate to practice in another state or jurisdiction, or has practiced without a certificate in violation of the law. A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action.

(e) The **state emergency management agency department of homeland security** may order a certificate holder to submit to a reasonable physical or mental examination if the certificate holder's physical or mental capacity to practice safely and competently is at issue in a disciplinary proceeding. Failure to comply with a **state emergency management agency department of homeland security** order to submit to a physical or mental examination makes a certificate holder liable to temporary suspension under subsection (i).

(f) Except as provided under subsection (a), subsection (g), and section 14.5 of this chapter, a certificate may not be denied, revoked, or suspended because the applicant or certificate holder has been convicted of an offense. The acts from which the applicant's or certificate holder's conviction resulted may be considered as to whether the applicant or certificate holder should be entrusted to serve the public in a specific capacity.

(g) The **state emergency management agency department of homeland security** may deny, suspend, or revoke a certificate issued under this article if the individual who holds or is applying for the certificate is convicted of any of the following:

(1) Possession of cocaine ~~or~~ a narcotic drug ~~or~~ methamphetamine under IC 35-48-4-6.

(2) **Possession of methamphetamine under IC 35-48-4-6.1.**

(3) Possession of a controlled substance under IC 35-48-4-7(a).

~~(3)~~ (4) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).

~~(4)~~ (5) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).

~~(5)~~ (6) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).

~~(6)~~ (7) Possession of paraphernalia as a Class D felony under

IC 35-48-4-8.3(b).

~~(7)~~ **(8)** Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.

~~(8)~~ **(9)** Maintaining a common nuisance under IC 35-48-4-13.

~~(9)~~ **(10)** An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.

~~(10)~~ **(11)** Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through ~~(9)~~: **(10)**.

~~(11)~~ **(12)** Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (10).

~~(12)~~ **(13)** An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described by subdivisions (1) through ~~(11)~~ **(12)**.

(h) A decision of the ~~state emergency management agency~~ **department of homeland security** under subsections (b) through (g) may be appealed to the commission under IC 4-21.5-3-7.

(i) The ~~state emergency management agency~~ **department of homeland security** may temporarily suspend a certificate holder's certificate under IC 4-21.5-4 before a final adjudication or during the appeals process if the ~~state emergency management agency~~ **department of homeland security** finds that a certificate holder would represent a clear and immediate danger to the public's health, safety, or property if the certificate holder were allowed to continue to practice.

(j) On receipt of a complaint or information alleging that a person certified under this chapter or IC 16-31-3.5 has engaged in or is engaging in a practice that is subject to disciplinary sanctions under this chapter, the ~~state emergency management agency~~ **department of homeland security** must initiate an investigation against the person.

(k) The ~~state emergency management agency~~ **department of homeland security** shall conduct a factfinding investigation as the ~~state emergency management agency~~ **department of homeland security** considers proper in relation to the complaint.

(l) The ~~state emergency management agency~~ **department of homeland security** may reinstate a certificate that has been suspended under this section if the ~~state emergency management agency~~ **department of homeland security** is satisfied that the applicant is able to practice with reasonable skill, competency, and safety to the public. As a condition of reinstatement, the ~~state emergency management agency~~ **department of homeland security** may impose disciplinary or corrective measures authorized under this chapter.

(m) The ~~state emergency management agency~~ **department of homeland security** may not reinstate a certificate that has been revoked under this chapter.

(n) The ~~state emergency management agency~~ **department of homeland security** must be consistent in the application of sanctions authorized in this chapter. Significant departures from prior decisions involving similar conduct must be explained in the ~~state emergency management agency's~~ **department of homeland security's** findings or orders.

(o) A certificate holder may not surrender the certificate holder's

certificate without the written approval of the ~~state emergency management agency~~, **department of homeland security**, and the ~~state emergency management agency~~ **department of homeland security** may impose any conditions appropriate to the surrender or reinstatement of a surrendered certificate.

(p) For purposes of this section, "certificate holder" means a person who holds:

- (1) an unlimited certificate;
- (2) a limited or probationary certificate; or
- (3) an inactive certificate.

SECTION 7. IC 16-31-3-14.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14.5. The ~~state emergency management agency~~ **department of homeland security** may issue an order under IC 4-21.5-3-6 to deny an applicant's request for certification or permanently revoke a certificate under procedures provided by section 14 of this chapter if the individual who holds the certificate issued under this title is convicted of any of the following:

- (1) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~ **methamphetamine** under IC 35-48-4-1.
- (2) Dealing in methamphetamine under IC 35-48-4-1.1.**
- (3) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.**
- ~~(3)~~ **(4) Dealing in a schedule IV controlled substance under IC 35-48-4-3.**
- ~~(4)~~ **(5) Dealing in a schedule V controlled substance under IC 35-48-4-4.**
- ~~(5)~~ **(6) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.**
- ~~(6)~~ **(7) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.**
- ~~(7)~~ **(8) Dealing in a counterfeit substance under IC 35-48-4-5.**
- ~~(8)~~ **(9) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).**
- ~~(9)~~ **(10) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8): (9).**
- ~~(10)~~ **(11) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8): (9).**
- ~~(11)~~ **(12) A crime of violence (as defined in IC 35-50-1-2(a)).**
- ~~(12)~~ **(13) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11). (12).**

SECTION 8. IC 20-28-5-8, AS ADDED BY P.L.246-2005, SECTION 159, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

(1) The state superintendent.

(2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority if a nonpublic school employs the licensed employee.

(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(b) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the individual knows that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (c).

(c) The department, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the department to have been convicted of any of the following felonies:

(1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

(2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(5) Child molesting (IC 35-42-4-3).

(6) Child exploitation (IC 35-42-4-4(b)).

(7) Vicarious sexual gratification (IC 35-42-4-5).

(8) Child solicitation (IC 35-42-4-6).

(9) Child seduction (IC 35-42-4-7).

(10) Sexual misconduct with a minor (IC 35-42-4-9).

(11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

(12) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~ methamphetamine (IC 35-48-4-1).

(13) **Dealing in methamphetamine (IC 35-48-4-1.1).**

(14) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

~~(14)~~ **(15)** Dealing in a schedule IV controlled substance (IC 35-48-4-3).

~~(15)~~ **(16)** Dealing in a schedule V controlled substance (IC 35-48-4-4).

~~(16)~~ **(17)** Dealing in a counterfeit substance (IC 35-48-4-5).

~~(17)~~ **(18)** Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).

(d) A license may be suspended by the state superintendent as specified in IC 20-28-7-7.

SECTION 9. IC 22-15-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) A practitioner shall comply with the standards established under this licensing program. A practitioner is subject to the exercise of the disciplinary

sanctions under subsection (b) if the department finds that a practitioner has:

- (1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;
- (2) engaged in fraud or material deception in the course of professional services or activities;
- (3) advertised services or goods in a false or misleading manner;
- (4) falsified or knowingly allowed another person to falsify attendance records or certificates of completion of continuing education courses provided under this chapter;
- (5) been convicted of a crime that has a direct bearing on the practitioner's ability to continue to practice competently;
- (6) knowingly violated a state statute or rule or federal statute or regulation regulating the profession for which the practitioner is licensed;
- (7) continued to practice although the practitioner has become unfit to practice due to:
 - (A) professional incompetence;
 - (B) failure to keep abreast of current professional theory or practice;
 - (C) physical or mental disability; or
 - (D) addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;
- (8) engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;
- (9) allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual or business who renders services beyond the scope of that individual's or business's training, experience, or competence;
- (10) had disciplinary action taken against the practitioner or the practitioner's license to practice in another state or jurisdiction on grounds similar to those under this chapter;
- (11) assisted another person in committing an act that would constitute a ground for disciplinary sanction under this chapter; or
- (12) allowed a license issued by the department to be:
 - (A) used by another person; or
 - (B) displayed to the public when the license has expired, is inactive, is invalid, or has been revoked or suspended.

For purposes of subdivision (10), a certified copy of a record of disciplinary action constitutes prima facie evidence of a disciplinary action in another jurisdiction.

(b) The department may impose one (1) or more of the following sanctions if the department finds that a practitioner is subject to disciplinary sanctions under subsection (a):

- (1) Permanent revocation of a practitioner's license.
- (2) Suspension of a practitioner's license.
- (3) Censure of a practitioner.
- (4) Issuance of a letter of reprimand.
- (5) Assess a civil penalty against the practitioner in accordance

1 with the following:

2 (A) The civil penalty may not be more than one thousand dollars
3 (\$1,000) for each violation listed in subsection (a), except for a
4 finding of incompetency due to a physical or mental disability.

5 (B) When imposing a civil penalty, the department shall consider
6 a practitioner's ability to pay the amount assessed. If the
7 practitioner fails to pay the civil penalty within the time specified
8 by the department, the department may suspend the practitioner's
9 license without additional proceedings. However, a suspension
10 may not be imposed if the sole basis for the suspension is the
11 practitioner's inability to pay a civil penalty.

12 (6) Place a practitioner on probation status and require the
13 practitioner to:

14 (A) report regularly to the department upon the matters that are
15 the basis of probation;

16 (B) limit practice to those areas prescribed by the department;

17 (C) continue or renew professional education approved by the
18 department until a satisfactory degree of skill has been attained
19 in those areas that are the basis of the probation; or

20 (D) perform or refrain from performing any acts, including
21 community restitution or service without compensation, that the
22 department considers appropriate to the public interest or to the
23 rehabilitation or treatment of the practitioner.

24 The department may withdraw or modify this probation if the
25 department finds after a hearing that the deficiency that required
26 disciplinary action has been remedied or that changed
27 circumstances warrant a modification of the order.

28 (c) If an applicant or a practitioner has engaged in or knowingly
29 cooperated in fraud or material deception to obtain a license to practice,
30 including cheating on the licensing examination, the department may
31 rescind the license if it has been granted, void the examination or other
32 fraudulent or deceptive material, and prohibit the applicant from
33 reapplying for the license for a length of time established by the
34 department.

35 (d) The department may deny licensure to an applicant who has had
36 disciplinary action taken against the applicant or the applicant's license
37 to practice in another state or jurisdiction or who has practiced without
38 a license in violation of the law. A certified copy of the record of
39 disciplinary action is conclusive evidence of the other jurisdiction's
40 disciplinary action.

41 (e) The department may order a practitioner to submit to a reasonable
42 physical or mental examination if the practitioner's physical or mental
43 capacity to practice safely and competently is at issue in a disciplinary
44 proceeding. Failure to comply with a department order to submit to a
45 physical or mental examination makes a practitioner liable to temporary
46 suspension under subsection (j).

47 (f) Except as provided under subsection (g) or (h), a license may not
48 be denied, revoked, or suspended because the applicant or holder has
49 been convicted of an offense. The acts from which the applicant's or
50 holder's conviction resulted may, however, be considered as to whether
51 the applicant or holder should be entrusted to serve the public in a

specific capacity.

(g) The department may deny, suspend, or revoke a license issued under this chapter if the individual who holds the license is convicted of any of the following:

(1) Possession of cocaine ~~or~~ a narcotic drug ~~or methamphetamine~~ under IC 35-48-4-6.

(2) **Possession of methamphetamine under IC 35-48-4-6.1.**

(3) Possession of a controlled substance under IC 35-48-4-7(a).

~~(3)~~ (4) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).

~~(4)~~ (5) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).

~~(5)~~ (6) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).

~~(6)~~ (7) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).

~~(7)~~ (8) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.

~~(8)~~ (9) Maintaining a common nuisance under IC 35-48-4-13.

~~(9)~~ (10) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.

~~(10)~~ (11) Conspiracy under IC 35-41-5-2 to commit an offense listed in clauses (1) through ~~(9)~~: (10).

~~(11)~~ (12) Attempt under IC 35-41-5-1 to commit an offense listed in clauses (1) through (10).

~~(12)~~ (13) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under clauses (1) through ~~(11)~~: (12).

(h) The department shall deny, revoke, or suspend a license issued under this chapter if the individual who holds the license is convicted of any of the following:

(1) Dealing in cocaine ~~or~~ a narcotic drug ~~or methamphetamine~~ under IC 35-48-4-1.

(2) **Dealing in methamphetamine under IC 35-48-4-1.1.**

(3) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.

~~(3)~~ (4) Dealing in a schedule IV controlled substance under IC 35-48-4-3.

~~(4)~~ (5) Dealing in a schedule V controlled substance under IC 35-48-4-4.

~~(5)~~ (6) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.

~~(6)~~ (7) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.

~~(7)~~ (8) Dealing in a counterfeit substance under IC 35-48-4-5.

~~(8)~~ (9) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).

~~(9)~~ (10) Conspiracy under IC 35-41-5-2 to commit an offense listed

in clauses (1) through ~~(8)~~ **(9)**.

~~(10)~~ **(11)** Attempt under IC 35-41-5-1 to commit an offense listed in clauses (1) through (9).

~~(11)~~ **(12)** An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under clauses (1) through ~~(10)~~ **(11)**.

~~(12)~~ **(13)** A violation of any federal or state drug law or rule related to wholesale legend drug distributors licensed under IC 25-26-14.

(i) A decision of the department under subsections (b) through (h) may be appealed to the commission under IC 4-21.5-3-7.

(j) The department may temporarily suspend a practitioner's license under IC 4-21.5-4 before a final adjudication or during the appeals process if the department finds that a practitioner represents a clear and immediate danger to the public's health, safety, or property if the practitioner is allowed to continue to practice.

(k) On receipt of a complaint or an information alleging that a person licensed under this chapter has engaged in or is engaging in a practice that jeopardizes the public health, safety, or welfare, the department shall initiate an investigation against the person.

(l) Any complaint filed with the office of the attorney general alleging a violation of this licensing program shall be referred to the department for summary review and for its general information and any authorized action at the time of the filing.

(m) The department shall conduct a fact finding investigation as the department considers proper in relation to the complaint.

(n) The department may reinstate a license that has been suspended under this section if, after a hearing, the department is satisfied that the applicant is able to practice with reasonable skill, safety, and competency to the public. As a condition of reinstatement, the department may impose disciplinary or corrective measures authorized under this chapter.

(o) The department may not reinstate a license that has been revoked under this chapter. An individual whose license has been revoked under this chapter may not apply for a new license until seven (7) years after the date of revocation.

(p) The department shall seek to achieve consistency in the application of sanctions authorized in this chapter. Significant departures from prior decisions involving similar conduct must be explained in the department's findings or orders.

(q) A practitioner may petition the department to accept the surrender of the practitioner's license instead of having a hearing before the commission. The practitioner may not surrender the practitioner's license without the written approval of the department, and the department may impose any conditions appropriate to the surrender or reinstatement of a surrendered license.

(r) A practitioner who has been subjected to disciplinary sanctions may be required by the commission to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount

assessed. The costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.

SECTION 10. IC 25-1-1.1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. A board, a commission, or a committee may suspend or revoke a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

- (1) Possession of cocaine ~~or a narcotic drug or methamphetamine~~ under IC 35-48-4-6.
- (2) **Possession of methamphetamine under IC 35-48-4-6.1.**
- (3) Possession of a controlled substance under IC 35-48-4-7(a).
- ~~(3)~~ (4) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).
- ~~(4)~~ (5) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).
- ~~(5)~~ (6) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).
- ~~(6)~~ (7) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).
- ~~(7)~~ (8) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.
- ~~(8)~~ (9) Maintaining a common nuisance under IC 35-48-4-13.
- ~~(9)~~ (10) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.
- ~~(10)~~ (11) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through ~~(9)~~: (10).
- ~~(11)~~ (12) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through ~~(9)~~: (10).
- ~~(12)~~ (13) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through ~~(11)~~: (12).

SECTION 11. IC 25-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. A board, a commission, or a committee shall revoke or suspend a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

- (1) Dealing in or manufacturing cocaine ~~or a narcotic drug or methamphetamine~~ under IC 35-48-4-1.
- (2) **Dealing in methamphetamine under IC 35-48-4-1.1.**
- (3) Dealing in a schedule I, II, or III controlled substance under

IC 35-48-4-2.

~~(3)~~ **(4)** Dealing in a schedule IV controlled substance under IC 35-48-4-3.

~~(4)~~ **(5)** Dealing in a schedule V controlled substance under IC 35-48-4-4.

~~(5)~~ **(6)** Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.

~~(6)~~ **(7)** Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.

~~(7)~~ **(8)** Dealing in a counterfeit substance under IC 35-48-4-5.

~~(8)~~ **(9)** Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).

~~(9)~~ **(10)** Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through ~~(8)~~: **(9)**.

~~(10)~~ **(11)** Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through ~~(8)~~: **(9)**.

~~(11)~~ **(12)** An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through ~~(10)~~: **(11)**.

~~(12)~~ **(13)** A violation of any federal or state drug law or rule related to wholesale legend drug distributors licensed under IC 25-26-14.

SECTION 12. IC 31-30-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

(1) IC 35-42-1-1 (murder);

(2) IC 35-42-3-2 (kidnapping);

(3) IC 35-42-4-1 (rape);

(4) IC 35-42-4-2 (criminal deviate conduct);

(5) IC 35-42-5-1 (robbery) if:

(A) the robbery was committed while armed with a deadly weapon; or

(B) the robbery results in bodily injury or serious bodily injury;

(6) IC 35-42-5-2 (carjacking);

(7) IC 35-45-9-3 (criminal gang activity);

(8) IC 35-45-9-4 (criminal gang intimidation);

(9) IC 35-47-2-1 (carrying a handgun without a license);

(10) IC 35-47-10 (children and firearms);

(11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or

(12) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in subdivisions (1) through (11);

if the individual was at least sixteen (16) years of age at the time of the alleged violation.

(b) The juvenile court does not have jurisdiction for an alleged violation of manufacturing or dealing in cocaine ~~or~~ a narcotic drug ~~or~~ methamphetamine (IC 35-48-4-1), **dealing in methamphetamine (IC 35-48-4-1.1)**, dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing in a schedule IV controlled substance

(IC 35-48-4-3), if:

- (1) the individual has a prior unrelated conviction under IC 35-48-4-1, **IC 35-48-4-1.1**, IC 35-48-4-2, or IC 35-48-4-3; or
- (2) the individual has a prior unrelated juvenile adjudication that, if committed by an adult, would be a crime under IC 35-48-4-1, **IC 35-48-4-1.1**, IC 35-48-4-2, or IC 35-48-4-3;

and the individual was at least sixteen (16) years of age at the time of the alleged violation.

(c) Once an individual described in subsection (a) **or (b)** has been charged with any crime listed in subsection ~~(a)(1) through (a)(15)~~ **(a) or (b)**, the court having adult criminal jurisdiction shall retain jurisdiction over the case even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to or a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.

SECTION 13. IC 34-24-1-1, AS AMENDED BY SEA 145-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine **or** a narcotic drug **or** methamphetamine (IC 35-48-4-1).

(ii) **Dealing in methamphetamine (IC 35-48-4-1.1).**

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

~~(iii)~~ (iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

~~(iv)~~ (v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

~~(v)~~ (vi) Dealing in a counterfeit substance (IC 35-48-4-5).

~~(vi)~~ (vii) Possession of cocaine **or** a narcotic drug **or** methamphetamine (IC 35-48-4-6).

(viii) **Possession of methamphetamine (IC 35-48-4-6.1).**

~~(vii)~~ (ix) Dealing in paraphernalia (IC 35-48-4-8.5).

~~(viii)~~ (x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons,

communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

- (A) commit, attempt to commit, or conspire to commit;
- (B) facilitate the commission of; or
- (C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~ ~~methamphetamine~~ (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

~~(C)~~ **(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).**

~~(D)~~ **(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).**

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two

(2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal

statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine ~~or a narcotic drug~~). ~~or methamphetamine~~;

(2) **IC 35-48-4-1.1 (dealing in methamphetamine).**

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

~~(3)~~ (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

~~(4)~~ (5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

~~(5)~~ (6) IC 35-48-4-6 (possession of cocaine ~~or a narcotic drug~~) ~~or methamphetamine~~ as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

~~(6)~~ (8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 14. IC 35-33-5-5, AS AMENDED BY P.L.187-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at ~~such time as it is a convenient time~~, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement

agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-13-1) shall be retained, returned, or disposed of in accordance with IC 35-47-13.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals, ~~or~~ controlled substances, **or chemically contaminated equipment (including drug paraphernalia as described in IC 35-48-4-8.5)** associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals, ~~or~~ controlled substances, **or chemically contaminated equipment** to demonstrate that the chemicals, ~~or~~ controlled substances, ~~were~~ **or chemically contaminated equipment was** associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals, ~~and~~ controlled substances, **and chemically contaminated equipment.**

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals, ~~and~~ controlled substances, **and chemically contaminated equipment** present at the illegal manufacturing site.

The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any manner provided in subsection (b), (c), or (e) shall maintain certified records of any ~~such~~ disposition **under subsection (b), (c), or (e).** Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19

U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

SECTION 15. IC 35-38-2.6-1, AS AMENDED BY P.L.213-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the sentencing of a person convicted of:

(1) a felony whenever any part of the sentence may not be suspended under IC 35-50-2-2 or IC 35-50-2-2.1;

(2) a misdemeanor whenever any part of the sentence may not be suspended; or

(3) an offense described in ~~IC 35-50-2-2(b)(4)(Q)~~ **IC 35-50-2-2(b)(4)(R)** (operating a vehicle while intoxicated with at least two (2) prior unrelated convictions), if the person:

(A) is required to serve the nonsuspendible part of the sentence in a community corrections:

(i) work release program; or

(ii) program that uses electronic monitoring as a part of the person's supervision; and

(B) participates in a court approved substance abuse program.

(b) This chapter does not apply to persons convicted of any of the following:

(1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.

(2) Except as provided in subsection (a)(3), any of the felonies listed in IC 35-50-2-2(b)(4).

(3) An offense under IC 9-30-5-4.

(4) An offense under IC 9-30-5-5.

SECTION 16. IC 35-42-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A person who:

(1) knowingly or intentionally kills another human being;

(2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, or carjacking;

(3) kills another human being while committing or attempting to commit:

(A) dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or methamphetamine~~ (IC 35-48-4-1);

(B) dealing in methamphetamine (IC 35-48-4-1.1);

(C) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

~~(C)~~ **(D)** dealing in a schedule IV controlled substance (IC 35-48-4-3); or

~~(D)~~ **(E)** dealing in a schedule V controlled substance; or

(4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 17. IC 35-45-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which

1 information can be either obtained or translated into a usable form.

2 "Enterprise" means:

3 (1) a sole proprietorship, corporation, limited liability company,
4 partnership, business trust, or governmental entity; or

5 (2) a union, an association, or a group, whether a legal entity or
6 merely associated in fact.

7 "Pattern of racketeering activity" means engaging in at least two (2)
8 incidents of racketeering activity that have the same or similar intent,
9 result, accomplice, victim, or method of commission, or that are
10 otherwise interrelated by distinguishing characteristics that are not
11 isolated incidents. However, the incidents are a pattern of racketeering
12 activity only if at least one (1) of the incidents occurred after August
13 31, 1980, and if the last of the incidents occurred within five (5) years
14 after a prior incident of racketeering activity.

15 "Racketeering activity" means to commit, to attempt to commit, to
16 conspire to commit a violation of, or aiding and abetting in a violation
17 of any of the following:

18 (1) A provision of IC 23-2-1, or of a rule or order issued under
19 IC 23-2-1.

20 (2) A violation of IC 35-45-9.

21 (3) A violation of IC 35-47.

22 (4) A violation of IC 35-49-3.

23 (5) Murder (IC 35-42-1-1).

24 (6) Battery as a Class C felony (IC 35-42-2-1).

25 (7) Kidnapping (IC 35-42-3-2).

26 (8) Child exploitation (IC 35-42-4-4).

27 (9) Robbery (IC 35-42-5-1).

28 (10) Carjacking (IC 35-42-5-2).

29 (11) Arson (IC 35-43-1-1).

30 (12) Burglary (IC 35-43-2-1).

31 (13) Theft (IC 35-43-4-2).

32 (14) Receiving stolen property (IC 35-43-4-2).

33 (15) Forgery (IC 35-43-5-2).

34 (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).

35 (17) Bribery (IC 35-44-1-1).

36 (18) Official misconduct (IC 35-44-1-2).

37 (19) Conflict of interest (IC 35-44-1-3).

38 (20) Perjury (IC 35-44-2-1).

39 (21) Obstruction of justice (IC 35-44-3-4).

40 (22) Intimidation (IC 35-45-2-1).

41 (23) Promoting prostitution (IC 35-45-4-4).

42 (24) Promoting professional gambling (IC 35-45-5-4).

43 (25) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
44 ~~methamphetamine~~ (IC 35-48-4-1).

45 **(26) Dealing in methamphetamine (IC 35-48-4-1.1).**

46 **(27) Dealing in a schedule I, II, or III controlled substance**
47 **(IC 35-48-4-2).**

48 ~~(27)~~ **(28) Dealing in a schedule IV controlled substance**
49 **(IC 35-48-4-3).**

50 ~~(28)~~ **(29) Dealing in a schedule V controlled substance**
51 **(IC 35-48-4-4).**

~~(29)~~ **(30)** Dealing in marijuana, hash oil, or hashish
(IC 35-48-4-10).

~~(30)~~ **(31)** Money laundering (IC 35-45-15-5).

~~(31)~~ **(32)** A violation of IC 35-47.5-5.

SECTION 18. IC 35-46-1-8, AS AMENDED BY P.L.2-2005,
SECTION 126, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2006]: Sec. 8. (a) A person at least eighteen
(18) years of age who knowingly or intentionally encourages, aids,
induces, or causes a person less than eighteen (18) years of age to
commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2)
commits contributing to delinquency, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is a Class C
felony:

(1) if:

(A) the person committing the offense is at least twenty-one (21)
years of age and knowingly or intentionally furnishes:

(i) an alcoholic beverage to a person less than eighteen (18)
years of age in violation of IC 7.1-5-7-8 when the person
committing the offense knew or reasonably should have known
that the person furnished the alcoholic beverage was less than
eighteen (18) years of age; or

(ii) a controlled substance (as defined in IC 35-48-1-9) or a
drug (as defined in IC 9-13-2-49.1) in violation of Indiana law;
and

(B) the consumption, ingestion, or use of the alcoholic beverage,
controlled substance, or drug is the proximate cause of the death
of any person; or

(2) if the person committing the offense knowingly or intentionally
encourages, aids, induces, or causes a person less than eighteen
(18) years of age to commit an act that would be a felony if
committed by an adult under any of the following:

(A) IC 35-48-4-1.

(B) **IC 35-48-4-1.1.**

(C) IC 35-48-4-2.

~~(C)~~ **(D)** IC 35-48-4-3.

~~(D)~~ **(E)** IC 35-48-4-4.

~~(E)~~ **(F)** IC 35-48-4-4.5.

~~(F)~~ **(G)** IC 35-48-4-4.6.

~~(G)~~ **(H)** IC 35-48-4-5.

SECTION 19. IC 35-46-6-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this
chapter, "model glue" means a glue or cement containing

~~(1)~~ toluene or acetone, or both. ~~or~~

~~(2) another chemical having the property of releasing toxic vapors.~~

SECTION 20. IC 35-46-6-2 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. A person who, with
intent to cause a condition of intoxication, euphoria, excitement,
exhilaration, stupefaction, or dulling of the senses, ingests or inhales the
fumes of:

(1) model glue; or

(2) a substance that contains:

- 1 (A) toluene;
- 2 (B) acetone;
- 3 (C) benzene;
- 4 (D) N-butyl nitrite;
- 5 (E) any aliphatic nitrite, unless prescribed by a physician; ~~or~~
- 6 (F) butane;
- 7 **(G) amyl butrate;**
- 8 **(H) isobutyl nitrate;**
- 9 **(I) freon;**
- 10 **(J) chlorinated hydrocarbons;**
- 11 **(K) methylene chloride;**
- 12 **(L) hexane;**
- 13 **(M) ether;**
- 14 **(N) chloroform; or**
- 15 **(O) halothane; or**
- 16 **(3) any other chemical having the property of releasing toxic**
- 17 **vapors;**
- 18 commits **inhaling toxic vapors**, a Class B misdemeanor.
- 19 SECTION 21. IC 35-47-4-5 IS AMENDED TO READ AS
- 20 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) As used in this
- 21 section, "serious violent felon" means a person who has been convicted
- 22 of:
- 23 (1) committing a serious violent felony in:
- 24 (A) Indiana; or
- 25 (B) any other jurisdiction in which the elements of the crime for
- 26 which the conviction was entered are substantially similar to the
- 27 elements of a serious violent felony; or
- 28 (2) attempting to commit or conspiring to commit a serious violent
- 29 felony in:
- 30 (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or
- 31 (B) any other jurisdiction in which the elements of the crime for
- 32 which the conviction was entered are substantially similar to the
- 33 elements of attempting to commit or conspiring to commit a
- 34 serious violent felony.
- 35 (b) As used in this section, "serious violent felony" means:
- 36 (1) murder (IC 35-42-1-1);
- 37 (2) voluntary manslaughter (IC 35-42-1-3);
- 38 (3) reckless homicide not committed by means of a vehicle
- 39 (IC 35-42-1-5);
- 40 (4) battery as a:
- 41 (A) Class A felony (IC 35-42-2-1(a)(5));
- 42 (B) Class B felony (IC 35-42-2-1(a)(4)); or
- 43 (C) Class C felony (IC 35-42-2-1(a)(3));
- 44 (5) aggravated battery (IC 35-42-2-1.5);
- 45 (6) kidnapping (IC 35-42-3-2);
- 46 (7) criminal confinement (IC 35-42-3-3);
- 47 (8) rape (IC 35-42-4-1);
- 48 (9) criminal deviate conduct (IC 35-42-4-2);
- 49 (10) child molesting (IC 35-42-4-3);
- 50 (11) sexual battery as a Class C felony (IC 35-42-4-8);
- 51 (12) robbery (IC 35-42-5-1);

- 1 (13) carjacking (IC 35-42-5-2);
- 2 (14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));
- 3 (15) burglary as a Class A felony or Class B felony (IC 35-43-2-1);
- 4 (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- 5 (17) resisting law enforcement as a Class B felony or Class C
- 6 felony (IC 35-44-3-3);
- 7 (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- 8 (19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);
- 9 (20) criminal gang intimidation (IC 35-45-9-4);
- 10 (21) stalking as a Class B felony or Class C felony
- 11 (IC 35-45-10-5);
- 12 (22) incest (IC 35-46-1-3);
- 13 (23) dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
- 14 ~~methamphetamine~~ (IC 35-48-4-1);
- 15 (24) **dealing in methamphetamine (IC 35-48-4-1.1);**
- 16 **(25) dealing in a schedule I, II, or III controlled substance**
- 17 **(IC 35-48-4-2);**
- 18 ~~(25)~~ **(26) dealing in a schedule IV controlled substance**
- 19 **(IC 35-48-4-3); or**
- 20 ~~(26)~~ **(27) dealing in a schedule V controlled substance**
- 21 **(IC 35-48-4-4).**

22 (c) A serious violent felon who knowingly or intentionally possesses
23 a firearm commits unlawful possession of a firearm by a serious violent
24 felon, a Class B felony.

25 SECTION 22. IC 35-48-4-1 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) A person who:

- 27 (1) knowingly or intentionally:
 - 28 (A) manufactures;
 - 29 (B) finances the manufacture of;
 - 30 (C) delivers; or
 - 31 (D) finances the delivery of;
- 32 cocaine ~~or~~ a narcotic drug, ~~or~~ ~~methamphetamine~~, pure or
- 33 adulterated, classified in schedule I or II; or
- 34 (2) possesses, with intent to:
 - 35 (A) manufacture;
 - 36 (B) finance the manufacture of;
 - 37 (C) deliver; or
 - 38 (D) finance the delivery of;
- 39 cocaine ~~or~~ a narcotic drug, ~~or~~ ~~methamphetamine~~, pure or
- 40 adulterated, classified in schedule I or II;
- 41 commits dealing in cocaine ~~or~~ a narcotic drug, ~~or~~ ~~methamphetamine~~,
- 42 a Class B felony, except as provided in subsection (b).
- 43 (b) The offense is a Class A felony if:
 - 44 (1) the amount of the drug involved weighs three (3) grams or
 - 45 more;
 - 46 (2) the person:
 - 47 (A) delivered; or
 - 48 (B) financed the delivery of;
 - 49 the drug to a person under eighteen (18) years of age at least three
 - 50 (3) years junior to the person; or
 - 51 (3) the person manufactured, delivered, or financed the delivery of

the drug:

- (A) on a school bus; or
- (B) in, on, or within one thousand (1,000) feet of:
 - (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center.

SECTION 23. IC 35-48-4-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. (a) A person who:**

(1) knowingly or intentionally:

- (A) manufactures;**
- (B) finances the manufacture of;**
- (C) delivers; or**
- (D) finances the delivery of;**

methamphetamine, pure or adulterated; or

(2) possesses, with intent to:

- (A) manufacture;**
- (B) finance the manufacture of;**
- (C) deliver; or**
- (D) finance the delivery of;**

methamphetamine, pure or adulterated;

commits dealing in methamphetamine, a Class B felony, except as provided in subsection (b).

(b) The offense is a Class A felony if:

(1) the amount of the drug involved weighs three (3) grams or more;

(2) the person:

- (A) delivered; or**
- (B) financed the delivery of;**

the drug to a person under eighteen (18) years of age at least three (3) years junior to the person; or

(3) the person manufactured, delivered, or financed the delivery of the drug:

- (A) on a school bus; or**
- (B) in, on, or within one thousand (1,000) feet of:**
 - (i) school property;**
 - (ii) a public park;**
 - (iii) a family housing complex; or**
 - (iv) a youth program center.**

SECTION 24. IC 35-48-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II, or methamphetamine (pure or adulterated) commits possession of cocaine or a narcotic drug, or methamphetamine, a Class D felony, except as provided in subsection (b).**

(b) The offense is:

(1) a Class C felony if:

- 1 (A) the amount of the drug involved (pure or adulterated) weighs
- 2 three (3) grams or more; or
- 3 (B) the person was also in possession of a firearm (as defined in
- 4 IC 35-47-1-5);
- 5 (2) a Class B felony if the person in possession of the cocaine **or**
- 6 narcotic drug ~~or methamphetamine~~ possesses less than three (3)
- 7 grams of pure or adulterated cocaine **or** a narcotic drug: ~~or~~
- 8 ~~methamphetamine~~:
- 9 (A) on a school bus; or
- 10 (B) in, on, or within one thousand (1,000) feet of:
- 11 (i) school property;
- 12 (ii) a public park;
- 13 (iii) a family housing complex; or
- 14 (iv) a youth program center; and
- 15 (3) a Class A felony if the person possesses the cocaine **or** narcotic
- 16 drug ~~or methamphetamine~~ in an amount (pure or adulterated)
- 17 weighing at least three (3) grams:
- 18 (A) on a school bus; or
- 19 (B) in, on, or within one thousand (1,000) feet of:
- 20 (i) school property;
- 21 (ii) a public park;
- 22 (iii) a family housing complex; or
- 23 (iv) a youth program center.
- 24 SECTION 25. IC 35-48-4-6.1 IS ADDED TO THE INDIANA
- 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 26 [EFFECTIVE JULY 1, 2006]: **Sec. 6.1. (a) A person who, without a**
- 27 **valid prescription or order of a practitioner acting in the course of**
- 28 **the practitioner's professional practice, knowingly or intentionally**
- 29 **possesses methamphetamine (pure or adulterated) commits**
- 30 **possession of methamphetamine, a Class D felony, except as**
- 31 **provided in subsection (b).**
- 32 **(b) The offense is:**
- 33 **(1) a Class C felony if:**
- 34 **(A) the amount of the drug involved (pure or adulterated)**
- 35 **weighs three (3) grams or more; or**
- 36 **(B) the person was also in possession of a firearm (as defined**
- 37 **in IC 35-47-1-5);**
- 38 **(2) a Class B felony if the person in possession of the**
- 39 **methamphetamine possesses less than three (3) grams of pure**
- 40 **or adulterated methamphetamine:**
- 41 **(A) on a school bus; or**
- 42 **(B) in, on, or within one thousand (1,000) feet of:**
- 43 **(i) school property;**
- 44 **(ii) a public park;**
- 45 **(iii) a family housing complex; or**
- 46 **(iv) a youth program center; and**
- 47 **(3) a Class A felony if the person possesses the**
- 48 **methamphetamine in an amount (pure or adulterated)**
- 49 **weighing at least three (3) grams:**
- 50 **(A) on a school bus; or**
- 51 **(B) in, on, or within one thousand (1,000) feet of:**

- (i) school property;**
- (ii) a public park;**
- (iii) a family housing complex; or**
- (iv) a youth program center.**

SECTION 26. IC 35-48-4-14.5, AS AMENDED BY P.L.192-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14.5. (a) As used in this section, "chemical reagents or precursors" refers to one (1) or more of the following:

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.
- (9) Sodium metal.
- (10) Ether.
- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).
- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.
- (19) Benzyl cyanide.
- (20) Phenylacetic acid and its esters or salts.
- (21) Piperidine and its salts.
- (22) Methylamine and its salts.
- (23) Isosafrole.
- (24) Safrole.
- (25) Piperonal.
- (26) Hydriodic acid.
- (27) Benzaldehyde.
- (28) Nitroethane.
- (29) Gamma-butyrolactone.
- (30) White phosphorus.
- (31) Hypophosphorous acid and its salts.
- (32) Acetic anhydride.
- (33) Benzyl chloride.
- (34) Ammonium nitrate.
- (35) Ammonium sulfate.
- (36) Hydrogen peroxide.
- (37) Thionyl chloride.
- (38) Ethyl acetate.
- (39) Pseudoephedrine hydrochloride.

(b) A person who possesses more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated,

commits a Class D felony. However, the offense is a Class C felony if the person possessed:

(1) a firearm while possessing more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated; or

(2) more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(c) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine ~~or amphetamine~~, schedule II controlled ~~substance~~ **substances** under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

(1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine ~~or amphetamine~~, schedule II controlled ~~substance~~ **substances** under IC 35-48-2-6; or

(2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine ~~or amphetamine~~, schedule II controlled ~~substance~~ **substances** under IC 35-48-2-6, in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(d) Subsection (b) does not apply to a:

(1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or

(2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:

(A) the location in which the substance is stored;

(B) the possession of the substance in a variety of:

(i) strengths;

(ii) brands; or

(iii) types; or

(C) the possession of the substance:

(i) with different expiration dates; or

(ii) in forms used for different purposes.

(e) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture

~~(1) Methcathinone, a schedule I controlled substance under IC 35-48-2-4;~~

~~(2) Methamphetamine, a schedule II controlled substance under~~

~~IC 35-48-2-6;~~

~~(3) Amphetamine, a schedule H controlled substance under IC 35-48-2-6; or~~

~~(4) Phentermine, a schedule IV controlled substance under IC 35-48-2-10;~~

a controlled substance commits a Class D felony.

(f) An offense under subsection (e) is a Class C felony if the person possessed:

(1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture ~~methamphetamine~~, a ~~schedule H~~ controlled substance; ~~under IC 35-48-2-6~~; or

(2) two (2) or more chemical reagents or precursors with intent to manufacture ~~methamphetamine~~, a ~~schedule H~~ controlled substance ~~under IC 35-48-2-6~~ in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture ~~methamphetamine, methcathinone, amphetamine, or phentermine~~ a **controlled substance** commits unlawful sale of a precursor, a Class D felony.

SECTION 27. IC 35-48-4-14.7, AS ADDED BY P.L.192-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14.7. (a) This section does not apply to the following:

(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (f).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (f).

(b) The following definitions apply throughout this section:

(1) "Constant video monitoring" means the surveillance by an automated camera that:

(A) records at least one (1) photograph or digital image every ten (10) seconds;

(B) retains a photograph or digital image for at least seventy-two (72) hours;

(C) has sufficient resolution and magnification to permit the

- 1 identification of a person in the area under surveillance; and
 2 (D) stores a recorded photograph or digital image at a location
 3 that is immediately accessible to a law enforcement officer.
- 4 (2) "Convenience package" means a package that contains a drug
 5 having as an active ingredient not more than one hundred twenty
 6 (120) milligrams of ephedrine or pseudoephedrine, or both.
- 7 (3) "Ephedrine" means pure or adulterated ephedrine.
- 8 (4) "Pseudoephedrine" means pure or adulterated pseudoephedrine.
- 9 (5) "Suspicious order" means a sale or transfer of a drug containing
 10 ephedrine or pseudoephedrine if the sale or transfer:
- 11 (A) is a sale or transfer that the retail distributor, wholesaler, or
 12 manufacturer is required to report to the United States Drug
 13 Enforcement Administration;
- 14 (B) appears suspicious to the retail distributor, wholesaler, or
 15 manufacturer in light of the recommendations contained in
 16 Appendix A of the report to the United States attorney general by
 17 the suspicious orders task force under the federal Comprehensive
 18 Methamphetamine Control Act of 1996; or
- 19 (C) is for cash or a money order in a total amount of at least two
 20 hundred dollars (\$200).
- 21 (6) "Unusual theft" means the theft or unexplained disappearance
 22 from a particular retail store of drugs containing ten (10) grams or
 23 more of ephedrine, pseudoephedrine, or both in a twenty-four (24)
 24 hour period.
- 25 (c) This subsection does not apply to a convenience package. A
 26 person may sell a drug that contains the active ingredient of ephedrine,
 27 pseudoephedrine, or both only if the person complies with the
 28 following conditions:
- 29 (1) The person does not sell the drug to a person less than eighteen
 30 (18) years of age.
- 31 (2) The person does not sell drugs containing more than three (3)
 32 grams of ephedrine or pseudoephedrine, or both in one (1)
 33 transaction.
- 34 (3) The person requires:
- 35 (A) the purchaser to produce a state or federal identification card;
- 36 (B) the purchaser to complete a paper or an electronic log in a
 37 format approved by the state police department with the
 38 purchaser's name, address, and driver's license or other
 39 identification number; and
- 40 (C) the clerk who is conducting the transaction to initial or
 41 electronically record the clerk's identification on the log.
- 42 Records from the completion of a log must be retained for at least
 43 two (2) years. ~~and may be inspected by~~ A law enforcement officer
 44 **has the right to inspect and copy a log or the records from the**
 45 **completion of a log** in accordance with state and federal law. A
 46 **person may not sell or release a log or the records from the**
 47 **completion of a log for a commercial purpose. The Indiana**
 48 **criminal justice institute may obtain information concerning a**
 49 **log or the records from the completion of a log from a law**
 50 **enforcement officer if the information may not be used to**
 51 **identify a specific individual and is used only for statistical**

purposes. A retailer who in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct. This subdivision expires June 30, 2008.

(4) The person stores the drug:

(A) behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee; or

(B) directly in front of the pharmacy counter in the direct line of sight of an employee at the pharmacy counter, in an area under constant video monitoring, if the drug is sold in a retail establishment that:

(i) is a pharmacy; or

(ii) contains a pharmacy that is open for business.

(d) A person may not purchase drugs containing more than three (3) grams of ephedrine, pseudoephedrine, or both in one (1) week.

(e) This subsection only applies to convenience packages. A person may not sell drugs containing more than one hundred twenty (120) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction if the drugs are sold in convenience packages. A person who sells convenience packages must secure the convenience packages in at least one (1) of the following ways:

(1) The convenience package must be stored not more than thirty (30) feet away from a checkout station or counter and must be in the direct line of sight of an employee at the checkout station or counter.

(2) The convenience package must be protected by a reliable anti-theft device that uses package tags and detection alarms designed to prevent theft.

(3) The convenience package must be stored in restricted access shelving that permits a purchaser to remove not more than one (1) package every fifteen (15) seconds.

(4) The convenience package must be stored in an area that is under constant video monitoring, and a sign placed near the convenience package must warn that the area is under constant video monitoring.

(f) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(g) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular retail store, the retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular retail store behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.

(i) A person who knowingly or intentionally violates this section

commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(j) Before June 30, 2007, the state police department shall submit a report to the legislative council detailing the effectiveness of this section in reducing the illicit production of methamphetamine. The report must describe the number of arrests or convictions that are attributable to the identification and logging requirements contained in this section, and must include recommendations for future action. The report must be in an electronic format under IC 5-14-6.

SECTION 28. IC 35-50-2-2, AS AMENDED BY P.L.213-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

(E) confinement (IC 35-42-3-3) with a deadly weapon;

(F) rape (IC 35-42-4-1) as a Class A felony;

(G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;

(H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;

(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;

(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;

- 1 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or
 2 with a deadly weapon;
 3 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 4 weapon;
 5 (M) escape (IC 35-44-3-5) with a deadly weapon;
 6 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 7 (O) dealing in cocaine **or** a narcotic drug **or** ~~methamphetamine~~
 8 (IC 35-48-4-1) if the court finds the person possessed a firearm
 9 (as defined in IC 35-47-1-5) at the time of the offense, or the
 10 person delivered or intended to deliver to a person under
 11 eighteen (18) years of age at least three (3) years junior to the
 12 person and was on a school bus or within one thousand (1,000)
 13 feet of:
 14 (i) school property;
 15 (ii) a public park;
 16 (iii) a family housing complex; or
 17 (iv) a youth program center;
 18 **(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court**
 19 **finds the person possessed a firearm (as defined in**
 20 **IC 35-47-1-5) at the time of the offense, or the person**
 21 **delivered or intended to deliver the methamphetamine pure**
 22 **or adulterated to a person under eighteen (18) years of age at**
 23 **least three (3) years junior to the person and was on a school**
 24 **bus or within one thousand (1,000) feet of:**
 25 **(i) school property;**
 26 **(ii) a public park;**
 27 **(iii) a family housing complex; or**
 28 **(iv) a youth program center;**
 29 **(Q) dealing in a schedule I, II, or III controlled substance (IC**
 30 **35-48-4-2) if the court finds the person possessed a firearm (as**
 31 **defined in IC 35-47-1-5) at the time of the offense, or the person**
 32 **delivered or intended to deliver to a person under eighteen (18)**
 33 **years of age at least three (3) years junior to the person and was**
 34 **on a school bus or within one thousand (1,000) feet of:**
 35 **(i) school property;**
 36 **(ii) a public park;**
 37 **(iii) a family housing complex; or**
 38 **(iv) a youth program center;**
 39 ~~(R)~~ **(R)** an offense under IC 9-30-5 (operating a vehicle while
 40 intoxicated) and the person who committed the offense has
 41 accumulated at least two (2) prior unrelated convictions under
 42 IC 9-30-5;
 43 ~~(S)~~ **(S)** an offense under IC 9-30-5-5(b) (operating a vehicle
 44 while intoxicated causing death); or
 45 ~~(T)~~ **(T)** aggravated battery (IC 35-42-2-1.5).
 46 (c) Except as provided in subsection (e), whenever the court suspends
 47 a sentence for a felony, it shall place the person on probation under
 48 IC 35-38-2 for a fixed period to end not later than the date that the
 49 maximum sentence that may be imposed for the felony will expire.
 50 (d) The minimum sentence for a person convicted of voluntary
 51 manslaughter may not be suspended unless the court finds at the

1 sentencing hearing that the crime was not committed by means of a
2 deadly weapon.

3 (e) Whenever the court suspends that part of an offender's (as defined
4 in IC 5-2-12-4) sentence that is suspendible under subsection (b), the
5 court shall place the offender on probation under IC 35-38-2 for not
6 more than ten (10) years.

7 (f) An additional term of imprisonment imposed under IC 35-50-2-11
8 may not be suspended.

9 (g) A term of imprisonment imposed under IC 35-47-10-6 or
10 IC 35-47-10-7 may not be suspended if the commission of the offense
11 was knowing or intentional.

12 (h) A term of imprisonment imposed for an offense under
13 IC 35-48-4-6(b)(1)(B) **or IC 35-48-4-6.1(b)(1)(B)** may not be
14 suspended.

15 SECTION 29. [EFFECTIVE JULY 1, 2006] **IC 35-48-4-1.1 and**
16 **IC 35-48-4-6.1, both as added by this act, and IC 35-48-4-1,**
17 **IC 35-48-4-6, IC 35-48-4-14.5, and IC 35-48-4-14.7, all as amended**
18 **by this act, apply only to crimes committed after June 30, 2006.**

19 SECTION 30. **An emergency is declared for this act.**
(Reference is to ESB 193 as printed February 24, 2006.)

Conference Committee Report
on
Engrossed Senate Bill 193

Signed by:

Senator Bray
Chairperson

Representative Foley

Senator Hume

Representative Van Haaften

Senate Conferees

House Conferees